

REMARKS

Claims 1-18 are pending in the present application. Claims 13-18 are withdrawn from consideration. Claims 1-12 are rejected. Claims 1-2, 4-5, 7 and 10 are herein amended. No new matter has been entered.

Claim Rejections - 35 U.S.C. §103

Claims 1-9 are rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. (US Patent Application 2001/0036964 A1) in view of newly cited Pan et al. (US Patent 6,348,187 A1). The Examiner asserts that Clarkson et al. teach an anti-microbial composition comprising polyhydric alcohol where the preferred compounds are 1,2-hexanediol and 1,2-octanediol (section 0065). The Examiner concludes that it would have been obvious to use homologs of those alkanediols for “the same purpose”.

Claims 10-12 are rejected under 35 U.S.C. §103(a) as being obvious over Clarkson et al. and Pan et al. as applied to claims 1-9 and further in view of Jensen et al. (US Patent 2,550,255). The Examiner admits that Clarkson and Pan et al. fail to disclose specifically a food product containing this composition. The Examiner notes that in the absence in the specification as to what exactly is the scope of a “nutritionally effective edible substance,” the claims are interpreted broadly so that the active agent disclosed by Clarkson et al. will read on a “nutritionally effective edible substance.”

The Examiner notes that Jensen et al. teach some anti-bacterial agents that are employed as an effective preservative for food products (col. 1, lines 34-56).

The Examiner concludes that it would have been obvious to use the antimicrobial composition as taught by Clarkson et al. and Pan et al. in food products. The Examiner concludes that a person of ordinary skill in the art would have been motivated to use the composition taught by Clarkson and Pan et al. in food products because the anti-bacterial properties of 1,2-hexanediol and 1,2-octanediol “can be used as preservatives in food products to prevent spoilage and decomposition.”

Applicants herein amend the claims to no longer refer to thymol as a possible material to be added to the claimed compositions. Upon these amendments, Applicants submit that the rejection is mooted because there is no suggestion to use the remaining materials as claimed.

Applicants further traverse the rejections based on previously asserted unexpected effects of the particularly identified ingredients of the present invention, which provide synergistic effects to the invention that would have been unexpected based on the teachings of the prior art.

With respect to synergistic effects, the Examiner stated on page 6 in the recent Office Action that with regard to the argument for synergism, the burden is shifted to Applicant to show clear and convincing factual evidence of non-obviousness or unexpected results.

Applicants submit that the proof of synergism is clear on the face of the present application. Applicants direct the attention of the Examiner to paragraphs [0060] through [0065] in the present patent application publication No. US 2005/010619. The evidence therein demonstrates that the combination of the particular 1,2-alkanediol having 5-10 carbons and the particular fragrance components according to the present invention shows effects that are not

merely summed up but are in fact synergistic, thus supporting Applicants' claim of unexpectedly superior results. Applicants note, for example, Figure 2 in the specification. Thus, the antibacterial effect described in the specification is more than the effect that might have been expected by a person skilled in the art based on from Clarkson et al. and Pan et al.

Therefore Applicants further assert that the rejection for obviousness is improper based on a publication that discloses particular 1,2-alkanediol with 5-10 carbons having antibacterial effect and a publication that discloses a certain fragrance component such as thymol having antibacterial effect.

With respect to claims 7-9 reciting a medicine, Applicants further disagree with the rejection because not all of the claimed limitations are met by the cited combination of references, even before the removal of thymol from the claims.

The Examiner asserts that since Clarkson et al. teaches a deodorant used on the surface of the skin to fight micro-organisms, this deodorant reads on *both* a cosmetic or medicinal composition. Applicants disagree with this conclusion because a cosmetic is quite different from a medicine, and the disclosure of one would not render obvious the claiming of another.

The common meanings of the words are well known and unmistakable. Applicants note that the *American Heritage® Dictionary of the English Language, Fourth Edition Copyright (2000)* defines "medicine" as "An agent, such as a drug, used to treat disease or injury". The same dictionary defines "cosmetic" as "a preparation, such as powder or a skin cream, designed to beautify the body by direct application" or "something superficial that is used to cover a deficiency or defect." The *American Heritage® Stedman's Medical Dictionary Copyright*

(2002) defines “deodorant” as “An agent that masks, suppresses, or neutralizes odors, especially a cosmetic applied to the skin to mask body odors”.

Moreover, because both medicine and cosmetics/toiletries are disclosed in the present specification, it is clear that Applicants contemplated both medicine and cosmetics/toiletries, and therefore they should be treated as being members of different classes or categories.

Therefore, it is clear that a deodorant as disclosed in Clarkson et al. falls in the category of cosmetics/toiletries, and would not be read upon by a claim of a compound that includes a medicinally effective agent and which is medicinally effective on humans or animals, which is representative of claims 7-9. Therefore, Applicants further traverse the rejection of claims 7-9 as not obvious over the cited combination of references.

Applicants further disagree with the conclusion of obviousness of claims 10-12, because the Examiner has failed to present a suggestion to combine the cited references to reach the claimed invention. Moreover, the suggestion to combine the cited references, as proposed by the Examiner, arises from Applicants' specification, and not from the cited references.

Applicants note that neither Clarkson et al. nor Pan et al. provides any teaching or suggestion to use the compounds found therein in any food or edible substance. Clarkson et al. is concerned with antiperspirant for use on armpits and feet. Neither of these uses is traditionally associated with food. The Examiner cites Jensen as teaching that anti-bacterial agents may be employed as effective preservative for food products, and the Examiner concludes that this would have suggested to one skilled in the art that the anti-bacterial agents of Roetker et al. and Clarkson et al. could be used with food.

The above conclusion is not reasonable. Applicants readily admit that Jensen teaches that *some* anti-bacterial agents that may be used with food. However, Jensen teaches anti-bacterial agents made only from *persea gratissima*, a derivative of avocado trees. There is no express or implied suggestion that any other antibacterial agents, particularly the claimed antibacterial agents, may be used with food. Applicants note that there are millions of other anti-bacterial agents that exist in nature, a majority of which are poisonous, deleterious to health or unpalatable, and there is seen no teaching or suggestion that the specific anti-bacterial agents of Clarkson et al. or Pan et al. could be used with foods.

The Examiner then concludes that it would have been obvious to use the antimicrobial composition as taught by Clarkson et al. in food products because “because the anti-bacterial properties of 1,2-hexanediol and 1,2-octanediol can be used as a preservatives in food products to prevent spoilage and decomposition.”

However, the only shown teaching that the anti-bacterial properties of 1,2-hexanediol and 1,2-octanediol can be used as a preservatives in food products to prevent spoilage and decomposition is found in Applicants’ own disclosure. Applicants note that the Examiner may not use Applicants own disclosure as a suggestion to combine other references. Such a conclusion would amount to impermissible hindsight, which may not be used to advance the rejection.

Therefore, Applicants further disagree with the rejection of claims 10-12, and traverse it.

In view of the aforementioned amendments and accompanying remarks, Applicants submit that the claims, as herein amended, are in condition for allowance. Applicants request such action at an early date.

If the Examiner believes that this application is not now in condition for allowance, the Examiner is requested to contact Applicants' undersigned attorney to arrange for an interview to expedite the disposition of this case.

If this paper is not timely filed, Applicants respectfully petition for an appropriate extension of time. The fees for such an extension or any other fees that may be due with respect to this paper may be charged to Deposit Account No. 50-2866.

Respectfully submitted,

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cos·met·ic  [Pronunciation Key](#) (kŏz-mĕt'ĭk)
n.

1. A preparation, such as powder or a skin cream, designed to beautify the body by direct application.
2. Something superficial that is used to cover a deficiency or defect.

adj.

1. Serving to beautify the body, especially the face and hair.
2. Serving to modify or improve the appearance of a physical feature, defect, or irregularity: *cosmetic surgery*.
3.
 - a. Decorative rather than functional: *cosmetic fenders on cars*.
 - b. Lacking depth or significance; superficial: *made a few cosmetic changes when she took over the company*.

[French *cosmétique*, from Greek *kosmētikos*, *skilled in arranging*, from *kosmētos*, *well-ordered*, from *kosmein*, *to arrange*, from *kosmos*, *order*.]

cos·met'ic·al·ly *adv.*

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cos·met·ic (kōz-mēt'ĭk)*n.*

A preparation, such as powder or a skin cream, designed to beautify the body by direct application.

adj.

1. Serving to beautify the body, especially the face and hair.
2. Serving to modify or improve the appearance of a physical feature, defect, or irregularity.

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Main Entry: ¹**cos·met·ic**

Pronunciation: kăz-'met-ĭk

Function: *noun*

: a cosmetic preparation for external use

Source: Merriam-Webster's Medical Dictionary, © 2002 Merriam-Webster, Inc.

Main Entry: ²**cosmetic**Function: *adjective*

1 : of, relating to, or making for beauty especially of the complexion <cosmetic salves>

2 : correcting defects especially of the face <cosmetic surgery> —**cos·met·i·cal·ly** /-i-k (&-) lE/ *adverb*

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cosmetic

adj **1** : serving an esthetic rather than a useful purpose; "cosmetic fenders on cars"; "the buildings were utilitarian rather than decorative" [syn: decorative, ornamental] **2** : serving an aesthetic purpose in beautifying the body; "cosmetic surgery"; "enhansive makeup" [syn: enhanceive] *n* : a toiletry designed to beautify the body [syn: cosmetics]

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cosmetic

cosmetic: in CancerWEB's On-line Medical Dictionary

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toi·let·ry  **Pronunciation Key** (toi' lĭ-trē)
n. pl. toi·let·ries

An article, such as toothpaste or a hairbrush, used in personal grooming or dressing.

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toiletty

n. : an artifact used in making your toilet [syn: [toilet article](#), [toilettries](#)]

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med·i·cine  **P** Pronunciation Key (mĕd'ī-sĭn)
n.

1.
 - a. The science of diagnosing, treating, or preventing disease and other damage to the body or mind.
 - b. The branch of this science encompassing treatment by drugs, diet, exercise, and other nonsurgical means.
2. The practice of medicine.
3. An agent, such as a drug, used to treat disease or injury.
4. Something that serves as a remedy or corrective: *medicine for rebuilding the economy; measures that were harsh medicine.*
5.
 - a. Shamanistic practices or beliefs, especially among Native Americans.
 - b. Something, such as a ritual practice or sacred object, believed to control natural or supernatural powers or serve as a preventive or remedy.

[Middle English, from Old French, from Latin *medicīna*, from feminine of *medicīnus*, of a doctor, from *medicus*, physician. See **medical**.]

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medicine

see dose of one's own medicine; take one's medicine.

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med·i·cine (mĕd'ī-sĭn)
n.

1. The science of diagnosing, treating, or preventing disease and other damage to the body or mind.
2. The branch of this science encompassing treatment by drugs, diet, exercise, and other nonsurgical means.
3. The practice of medicine.
4. An agent, such as a drug, used to treat disease or injury.


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